cases: (1) criminal convictions, with a fine payable to the United States; (2) criminal convictions with a fine payable to an individual person; (3) contempt commitments to vindicate the dignity of the court; (4) contempt commitments to enforce a decree in favor of an individual person.

Under the Constitution the President has power "to grant reprieves and pardons for offences against the United States, except in cases of Impeachment." And the power to remit fines and forfeitures, though not mentioned in the Constitution, is included under this general power. See RAWLE, CONST. 177; 1 BISHOP, CRIM. LAW, § 909. Clearly class (1) comes within this power. *Osborn* v. *U. S.*, 91 U. S. 474. With equal clearness class (4), into which falls the principal case, does not. *Hendryx* v. *Fitzpatrick*, 19 Fed. Rep. 810. In class (2), the decisions, though not harmonious and mostly decisions of state courts, indicate that the power does not exist, because its exercise would interfere with vested rights. See 1 BISHOP, CRIM. LAW, § 910. *Contra*, *United States* v. *Thomasson*, 4 Biss. (U. S. Dist. Ct.) 336. In class (3) the question squarely arises whether the judiciary or the executive shall be the final judge of the manner in which a court is to preserve its dignity and enforce obedience. A possible distinction might be made between cases where the defendant is punished for a past act and those where he is punished till he complies with the order of the court. It is arguable that in the one case he has passed out of the hands of the court, and so the President may deal with him as he pleases, whereas in the other he is still under the direct control of the court. But this refinement seems unwise and unnecessary. A preferable result is pointed out by the *dictum* of the principal case that the "executive cannot draw to himself all the real judicial power of the nation by controlling the inherent and essential attribute of that power, — the authority to punish for disobedience of the orders of the courts."

LIABILITY OF ASSIGNEE OF BILL OF LADING FOR DEFAULTS OF ASSIGNOR. — By a late decision in Mississippi an unusual responsibility is imposed on the purchaser of a draft with a bill of lading attached. *Russel* v. *Smith Grain Co.*, 32 So. Rep. 287. The case holds that a bank buying from the vendor of grain a draft to which a bill of lading is attached is liable for breach of warranty as to the quality of the grain. The doctrine of this case originated in *Landa* v. *Lattin*, 19 Tex. Civ. App. 246; and was followed in *Finch* v. *Gregg*, 126 N. C. 176. The reasoning of these two cases, which are precisely in point, the court adopts. The argument is that the assignee of a bill of lading attached to a draft gets the property in the goods and can therefore sue the purchaser on his contract with the vendor for the price; that since he gets the benefits of the contract he should be compelled to accept the burdens. It is doubtful if the assignee of a bill of lading given as security is anything more than a pledgee. If so, he would probably, according to the reasoning of the court, have no rights under the contract. See *Sewell* v. *Burdick*, 10 App. Cas. 74. But admitting that the court's premises are correct, the conclusion reached does not seem to be justifiable. It may be that when a vendor of goods assigns a bill of lading to secure payment of a draft, he intends to assign also his claim against the purchaser. But this should give the purchaser no reciprocal rights against the assignee, who has in no way agreed to carry out the vendor's contract. The strongest argument in support of the decision is that

the buyer has paid the draft and taken the bill of lading in the belief that he was getting such goods as he had ordered; so upon discovering his mistake of fact he should be allowed to rescind. This ground of recovery, however, has been held insufficient even when the bill of lading has in fact been forged, for the reason that the bank makes no representations as to the goods covered by the bill of lading. *Goetz* v. *Bank of Kansas City*, 119 U. S. 551. *Leather* v. *Simpson*, 11 L. R. Eq. 398. See DANIEL, NEG. INSTR., § 1734.

The principal case seems not only incorrect on principle, but likely to produce hardship in its practical application. In some cases the results might be exceedingly harsh. For example, since by the general rule the measure of damages for breach of warranty is the difference between the value of the goods as warranted and the actual value of the goods delivered, the damages might in some instances be more than the amount received by the bank. See SEDG. DAM., § 762. There is no authority directly opposed to the principal case; but those cases where recovery by the acceptor of the draft is denied although the bill of lading has been forged, seem in principle irreconcilable with it. The case is significant as showing the growth of what is deemed to be an unfortunate doctrine in the law.

SPECIFIC PERFORMANCE OF CONTRACTS TO PERFORM CONTINUOUS ACTS. — By a recent decision in South Carolina a mandatory decree compelling a defendant to build and maintain a railroad station and keep a resident agent there was affirmed. The court thus not only gave specific performance of a contract to build, but also required the performance of continuous acts. *Murray* v. *Northwestern R. R. Co.*, 42 S. E. Rep. 617. This, it is often said, a court of equity will not do.

The reason why courts of equity will not give specific performance of contracts to build is commonly stated to be that they lack the power. See POMEROY, CONT., 2nd ed., §§ 307, 312. The real reason, however, would seem to be that there usually is a sufficient remedy at law; for the plaintiff can get damages and with them employ another contractor. See *Errington* v. *Aynesly*, 2 Bro. C. C. 343. When this reason fails, as it does in cases where the structure is to be on the land of the defendant and consequently no money damages will enable the plaintiff to erect it, a decree for performance issues. *Mayor* v. *Emmons*, [1901] 1 K. B. 515. The specifications as to the nature of the building must of course be reasonably definite. *Mayor* v. *Emmons*, *supra*. This relief, however, should not be deemed confined to cases where the plaintiff has granted land to the defendant as consideration for a promise by the defendant to build thereon, as is sometimes stated, for the relief is based on the broad doctrine that there is no adequate legal remedy. See *Stuyvesant* v. *Mayor*, 11 Paige (N. Y.) 426. These cases are but another application of that fundamental principle, and should not be considered exceptional.

As to the performance of continuous acts there is considerable conflict of authority. The majority of the decisions declare that a court of equity will not compel a defendant to perform a contract which requires the continuous employment of people, since a series of orders and a general superintendence would be necessitated. *Powell Duffryn Co.* v. *Taff Vale R. R. Co.*, L. R. 9 Ch. App. 331; *Blanchard* v. *Detroit Co.*, 31 Mich. 43. But the difficulty of enforcement seems to be exaggerated. To issue a series of orders